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17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19  
20 IN RE TESLA, INC. SECURITIES  
21 LITIGATION

Case No. 3:18-cv-04865-EMC

22 **[PROPOSED] ORDER GRANTING**  
23 **DEFENDANTS' EMERGENCY MOTION**  
**TO COMPEL SUPPLEMENTAL EXPERT**  
**REPORTS AND DEPOSITIONS**

1 Defendants' Emergency Motion to Compel Supplemental Expert Reports and Depositions  
 2 ("Motion") came on for hearing before the Court. The parties were represented by their respective  
 3 counsel of record. After considering the papers submitted by the parties and the argument of counsel,  
 4 the Court issues the following Order:

5 (1) By no later than \_\_\_\_\_, Plaintiff's experts Professor Heston and Dr.  
 6 Hartzmark shall produce and provide to Defendants supplemental expert disclosures pursuant to  
 7 Federal Rule 26 that explain Plaintiff's new approach to calculating options damages, all bases  
 8 therefor and all underlying calculations, specifically as it pertains to the use of actual implied volatility  
 9 instead of but-for implied volatility to calculate but-for option prices;

10 (2) By no later than \_\_\_\_\_, Plaintiff's experts Professor Heston and Dr.  
 11 Hartzmark shall each sit for a further deposition no longer than four hours on the record to answer  
 12 questions about their supplemental opinions.

13 A party that produces an expert report, "must supplement or correct [that report] . . . in a  
 14 timely manner if the party learns that in some material respect the [report] is incomplete or incorrect,  
 15 and if the additional or corrective information has not otherwise been made known to the other parties  
 16 during the discovery process or in writing." Fed. R. Civ. P. 26(e). "[T]he party's duty to supplement  
 17 extends both to information included in the report and to information given during the expert's  
 18 deposition." *Id.* "Rule 26(e) creates a duty to supplement." *Luke v. Fam. Care & Urgent Med.*  
 19 *Clinics*, 323 F. App'x 496, 500 (9th Cir. 2009).

20 Here, Plaintiff's initial expert disclosures calculated "but-for" stock option prices using but-  
 21 for" implied volatility. On December 12, 2022, Plaintiff advised Defendants that Plaintiff would  
 22 change their experts' opinions by instead using "*actual* [rather than but-for] reported implied volatility  
 23 for all calculations of option damages," including in the calculation of but-for option prices. (Batter  
 24 Decl., Ex. D at 4 (emphasis added).) Plaintiff's change in methodology for calculating alleged options  
 25 damages requires supplementation under Federal Rule 26(e), as well as Plaintiff's experts to sit for  
 26 additional depositions to be questioned about the new methodology.

27 \* \* \*

1 Based on the foregoing and all papers and proceedings held hereon, it is HEREBY ORDERED  
2 that Defendants' Motion is **GRANTED**.

3  
4 **IT IS SO ORDERED.**

5 Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Edward M. Chen  
United States District Judge